IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

Date of Decision: 27-7-1996.

CRIMINAL APPEAL NO. 7 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE H.R.SHELAT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

STATE OF GUJARAT

Versus

BHAGVANTSANG KALYANSANG

Appearance:

Shri S.T. Mehta, APP for the appellant.

Mr. R.S. Sanjanwala, Advocate for the Respondent.

CORAM : H.R.SHELAT,J.

(27-7-1996)

ORAL JUDGEMENT

The present appeal has been directed against the judgment dated 30th September 1987, delivered by the then learned Judicial Magistrate (F.C.) Limbdi, in Criminal Case No. 381 of 1986 on his file, acquitting the respondent of the offences under Section 279,337, 338 and 304-A of the Indian Penal Code, and Section 112-116 as well as 118 and 89 of the Motor Vehicles Act.

2. The case of the appellant is that Bhagwantsang Kalyansang Israni was the driver employed by Rajkot Jilla Panchayat. His Headquarters was at Morvi. To attend the meeting, the officers of the panchayat were to go to

Ahmedabad. Shri K.N. Kacha, Shri D.B. Kaneria, Shri S.U. Chudasma and P.A. to Vallabhbhai were to go to Ahmedabad. All left Rajkot in the morning on 31st August 1985. Crossing the local limits of village Pansina the jeep was proceeding towards Ahmedabad. Certain other vehicles were also proceeding ahead of the jeep. One truck was found stationary on the road because of the breakdown. The jeep rammed into the stationary truck from behind and then turned turtile rolling down the road and came to a halt at a distance of about 30 to 34 feet from the stationary truck,with the result 5 persons died, but the jeep driver fortunately survived. The police station at Limbdi was informed. The police officer reached the scene of incident and carrying out necessary investigation, he filed the chargesheet before the lower Court against the driver of the jeep, i.e., present respondent for the offences hereinabove stated. The learned Magistrate recorded the plea. The respondent pleaded not guilty. The prosecution adduced necessary evidence. Considering the evidence on record, the learned Magistrate found that the prosecution had failed to establish the charge beyond reasonable doubt. He therefore acquitted the respondent with which he was charged. It is against that judgment and order, the present appeal has been preferred before this Court.

2. Mr. Mehta, the learned APP representing the appellant assailed the judgment and order mainly on the ground of appreciation of evidence. According to him, the evidence on record was sufficiently cogent and convincing, but the learned Judge, overlooking that evidence, misdirected himself and erroneously appreciating the same, reached the conslusion not at all logical.

3. No doubt, in the case on hand, because of some thing going wrong with the driving of the concerned driver of the vehicle, five persons have lost the lives but the case has to be judged considering the evidence on record without being sentimental or sympathetic to those who have lost their lives or the bread earning members. In law, the prosecution has to show that the accused, who was driving the ill-fated vehicle was either rash or negligent or both in driving his vehicle, and because of his rash and negligent driving the persons either sustained the injuries or lost the lives. It is, at this stage, necessary to mention what in law the meaning of `Negligence' and `Rashness' is. `Negligence' means a breach of duty caused by omission to do something which a reasonable man guided by those considerations which ordinarily regulate the conduct of the human affairs

would do, or doing something which a prudent and reasonable man would not do. A bare negligence involving the risk of injury is punishable criminally though nobody is actually hurt by it. `Rashness' means primarily an over-hasty act and it is opposed to a deliberate act; and that acting with the consciousness that the mischievous and illegal consequences may follow, but with the hope that they will not, and often with the belief that the actor has taken sufficient precautions to prevent their happening. The imputability arises from acting despite the consciousness.

4. In view of such law, the prosecution has to establish the case, and if it does not, the Court cannot help, and will have to pass the order of acquittal. On such legal position if the evidence is dissected, I see no justification to upset the finding of the learned Judicial Magistrate. I will now in brief refer the evidence on record.

5. Karimbhai Amulakhbhai (Exh.6) was having a Tea Stall on the side of the road. He could see that the truck loaded with sand was going to Ahmedabad, but as the truck went out of order it was parked on the side of the road. The cleaner had gone to fetch the water from his tea stall. He could see the jeep hitting the truck from behind. Then the jeep went ahead and turned turtle after rolling down off the road and came to a halt at a distance of about 35 feet from the truck. He does not know who was driving the jeep. He was also not in a position to identify the respondent in the court that he was the person driving the jeep. His evidence in no way is helpful in deciding the point in issue as it throws no light. There is nothing in his evidence which would go to show that the jeep driver was rash and negligent as per the meaning mentioned hereinabove. How the jeep driver committed the breach of his duty, what was his duty and whether the breach of that duty was the result of the death cannot be spelt out from his evidence. Even if for the sake of argument it is so done, the prosecution cannot succeed because he has not stated that the respondent present in the Court was the jeep driver. Likewise, the evidence of the Cleaner of the truck is not helpful. And further on the fact of collision of two vehicles, rash and negligent act cannot be assumed against the driver.

6. Babubhai Amarsinhbhai (Exh.8) was a panch. He has merely stated what was the position of the vehicle after the incident. He merely stated that both the vehicles were damaged. He has stated nothing in respect of rash and negligent act of the driver. His evidence

is, therefore, not at all helpful to decide the point in question.

7. Bhikhabhai Ramjibhai (Exh. 16) was the driver of the truck, GRW 794. As the handle was broken he took the truck aside of the road, parked it, and was then screwing the bolt. His cleaner had gone to fetch the water. Meanwhile the jeep came from the back and hit the truck from the back and then went off the road, rolled down the road and came to a halt at a distance. All the five travelling in the jeep sustained mortal wounds and succumbed to the injuries. He does not know who was driving the jeep. He is therefore not in a position to point a finger at the respondent sitting in the Court. Even if it is believed that the respondent was driving the jeep, the evidence of the truck driver cannot help me in determining the point as the evidence throws no light on the proposition. Nothing can be judged as per the requirement of the law qua negligence and rashness because this witness has not stated anything in that regard.

8. Khimabhai Vihabhai (Exh. 28) is the cleaner of the truck. He could see the incident being happened. According to him, the truck was parked on the side of the road and a jeep came from the back side at the excessive speed and hit the truck from behind. He does not know who was the driver of the jeep. From his such evidence, it cannot be said that respondent was rash and negligent. No doubt, he has stated that the jeep was being driven at the excessive speed but that is not sufficient. The prosecution should elucidate from the witness as to what he meant about excessive speed because for some 20 miles speed would be excessive, and for some the speed of 50 miles will be normal. In this case, it is not elucidated what he meant about fast speed. When that is not done, it would not be just and proper to accept his say and hold that respondent was rash and negligent in driving the jeep, and he committed the offence as alleged.

9. Megrajbhai Nathubhai Chaudhry (Exh. 34) was the Investigating Officer. He merely stated what he did after receipt of the complaint. Naturally as he is not the eye witness he was not in a position to make any statement which would establish the case of rash and negligent driving. There is no other evidence on the point. The evidence discussed hereinabove, which is there on record, is not at all helpful as it throws no light on the proposition. In short, there is no evidence whatsoever on record establishing negligence and rashness on the part of the respondent in driving the jeep; and

that because of his rash and negligent driving, five persons lost the lives. The learned Magistrate was therefore, perfectly right in acquitting the respondent. I see no justification to upset the finding of the lower Court. The appeal is, therefore, devoid of merits and must fail.

10. In the result, the appeal is hereby dismissed and the order of acquittal is maintained.

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TRUE COPY

(R.M. Ravindran)
Private Secretary
to the Hon'ble Judge
High Court of Gujarat
Ahmedabad